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Mid Winter Meeting

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INDIANA UNIVERSITY
Maurer School of Law
Bloomington

MID WINTER MEETING

The Mid-Winter meeting of the Indiana State Bar Association convened at 9:45 at the Columbia Club in Indianapolis, President W. W. Miller of Gary presiding. The meeting had been preceded by a banquet at the Columbia Club on Thursday evening, December 18, at which Judge Sveinbjorn Johnson, formerly justice of the North Dakota Supreme Court and at present legal counsel for the University of Illinois, delivered an address upon the rule making power of the courts. This banquet was well attended and the address was received with repeated demonstrations of enthusiasm. Judge Johnson's paper will be published in a subsequent issue of the INDIANA LAW JOURNAL.

The first business of the association on Friday morning was the consideration of the bill for procedural reform which was published in the October issue of the INDIANA LAW JOURNAL. Professor Hugh E. Willis of the Indiana University Law School opened the discussion by a presentation of the arguments in favor of the bill. Professor Willis outlined the historical aspects of the development of legal procedure. He pointed out that our present system originated among the Anglo-Saxons in the form of the wager of law and the ordeal. Later after the Norman conquest the wager of battle superseded the other two systems in popularity and was in turn superseded by the jury trial. He pointed out that common law procedure developed from its crude beginnings largely by the accident of gradually accumulated dogmas until systematic English reform of 1835, but that no corresponding reform of legal procedure had been made in this country, with the exception of the introduction of the New York code which in turn has been subjected to a similar process of being incumbered by generations of precedents until we are little better off than we were under the common law system of pleading.

The speaker expressed the opinion that the only effective way to prevent the recurrence of what has already twice happened is to provide directory rather than mandatory rules of procedure and that the only way to provide such directory rules, and at the same time make provision for their prompt change and improvement as experience requires, is to vest the power to make

and change such rules in the courts themselves. This is the modern English system.

In defending the provision in the bill under discussion for notice pleading, Professor Willis pointed out that such system of pleading was the one which had actually been put into practice by the English court under its rule making power. He expressed the fear that unless such limitation upon the exercise of their power were imposed upon the courts, they might neglect to make the necessary and most desirable alterations from our present system.

The principle of the bill was attacked by several speakers, including B. F. Small and Judge Moran. Their views in substance seemed to be that there was no need for any reform in legal procedure and that consequently there was no necessity for considering the proposed bill. The opinion was expressed that the code system as it now exists in Indiana has served its purpose, well and on the whole been thoroughly satisfactory; that a litigant was seldom deprived of substantial rights under our present system; and that such alterations as may be from time to time found necessary can better come from legislative action.

Opposed to these views were those presented by Wilmer T. Fox and Professor Bernard Gavit. These gentlemen took the position that there was abundant evidence to compel the conclusion that our legal procedure was far from satisfactory in its results. They cited the increasing dissatisfaction of the public with the delays and expenses and particularly with the decisions on procedural technicalities as indicated by newspaper and press comments all over the country. It was pointed out that it were far better for the bench and bar to make the necessary adjustment of legal procedure than to have such a project undertaken by untrained and lay legislators under pressure of an outraged public opinion. It was further pointed out that under the system of notice pleading the exact issues of fact and law were framed by stipulation and agreement or, if this were impossible, by the judge during the preliminary conferences preceding the trial.

Mr. Arnold offered a bill which he proposed to substitute for the bill proposed by Professor Willis. Mr. Arnold's bill in effect relieved the Supreme Court in the exercise of its power to make rules from many of the limitations included in the original bill. Mr. Albert Gavin expressed his disapproval of both bills

on the grounds that the legislature and not the courts should make all rules of procedure. After Mr. Arnold's motion to substitute his bill for the original bill had been seconded, Judge Gause introduced and read a bill which he and Judge Sharpnack had drafted, in connection with others, which bill likewise provided for the rule making power in the courts but relieved the courts from any limitations in making and promulgating the rules of procedure.

Mr. Arnold thereupon withdrew his bill with the consent of his second, in favor of Judge Gause's bill. Subsequently Professor Willis likewise withdrew his bill in favor of the Gause bill.

Thereafter discussion of the new bill was carried on by Judge Lockyear and Mr. Frank Miller and Mr. Arthur Gilliom. Judge Lockyear opposed the measure on the grounds that the courts did not want to make rules and on further grounds that most of the defects of the present system of legal procedure could be remedied by a single change of the law with respect to venue and continuances. Mr. Miller thought the bill was unconstitutional and he said that the entire Terre Haute Bar thought the same thing. Mr. Gilliom supported the measure at some length. He expressed his opinion that if the power to make rules of procedure were reposed in the courts, the courts ought to exercise that power to the best of their ability whether they wanted to do so or not. He could see no reason why the experiment should not be tried in Indiana as a progressive measure to improve the administration of justice when it had proved successful elsewhere.

After the noon luncheon at which the entire association were the guests of the Indianapolis Bar Association at the Columbia Club dining room, the meeting was convened at 1:30 with President Miller presiding. Professor Willis announced that he was prepared to support Judge Gause's bill in preference to the measure which he had introduced in the morning. Thereupon the motion was carried, substituting the Gause bill for the Willis bill. After Judge McMahan had spoken approvingly of the measure before the house, a vote was taken to endorse and approve the bill presented by Judge Gause. The vote was for approval of the bill. The bill is printed in whole and is as follows:

A Bill for an Act Entitled an Act Relating to Legal Procedure in the Courts of this State; conferring certain powers

upon the Supreme Court to make, prescribe and enforce rules and regulations in regard thereto; authorizing said court to employ persons to be used in the preparation of such rules and regulations; making appropriation for carrying out the purposes of this act; and repealing all laws in conflict therewith.

Be it enacted by the General Assembly of the State of Indiana.

Section 1. The Supreme Court of this state shall have the power to make, prescribe, promulgate, regulate and enforce by rules the forms of writs and all other process; the mode and manner of framing and filing proceedings, papers and pleadings; of giving notice, serving and returning writs and process of all kinds; of giving, taking and obtaining evidence; drawing up, entering and enrolling orders and the keeping of all other records of the court; regulating costs; and generally to regulate and prescribe the entire procedure, including pleading, evidence and practice, to be used in all actions, motions and proceedings of whatever nature, in all the courts of this state, including the Supreme Court. Separate rules shall be made for civil and for criminal trial procedure.

Section 2. The Attorney General of Indiana, the Chairmen of the Judiciary Committees of the Senate and the House of Representatives of the General Assembly of the State of Indiana, the president and the vice-president of the Indiana State Bar Association and two Circuit Court judges of the State of Indiana, to be appointed annually by the Governor of the State of Indiana, shall constitute an advisory council whose duty it shall be to recommend and assist in the revision of the rules of court from time to time. The Attorney General shall be the chairman of said council. Said Council shall be advisory only and shall have no power to change any of the rules. The members of said Council shall serve without pay but shall be reimbursed out of the State Treasury for expenses necessarily and actually incurred by them in attending meetings of said Council outside the county of their residence.

Section 3. The Supreme Court is hereby authorized to employ such person or persons as it may deem proper to use in the preparation of such rules and regulations, and pay for such services out of the funds hereby appropriated.

Provided, however, that no such person or persons referred to in this section shall be employed or be entitled to compensation

therefor after the expiration of two years from the time this act takes effect.

Section 4. Any rule or regulation made or adopted, as provided in Section 1 hereof, shall be filed by said court in the office of the clerk of said court, and said court shall by order fix the time for the taking effect of any such rule or rules, and may contract for the printing and arrange for the distribution of copies of such rules and pay for the costs thereof out of money appropriated by this act.

Section 5. Any provision or rule provided by statute or rule of court relating to any procedure referred to in Section 1 hereof, in force at the time this act becomes effective, shall remain in full force and effect until the Supreme Court shall by a rule or rules made and adopted hereunder prescribe procedure inconsistent with or in lieu thereof. After any such rule or rules are made and adopted by the Supreme Court as herein provided, then from and after the time fixed by order of said court for the same to be in force all legal procedure in all the courts of this state shall be had in conformity with such rules and all of said courts shall be bound thereby.

Section 6. It is hereby appropriated out of any money in the general fund of the State Treasury not otherwise appropriated the sum of \$———— for the purpose of carrying out the provisions of this act, to be paid out upon the order of the Supreme Court.

Section 7. All laws or parts of laws inconsistent with this act are hereby repealed.

Mr. Milo Feightner introduced the following resolution which was approved unanimously by the association.

“Be it Resolved, That the officers and the Board of Managers of the Indiana State Bar Association are hereby authorized to adopt and set in operation a plan for the raising of an endowment fund by means of gifts, donations, bequests, and life memberships in this association issued to members contributing to said fund the sum of one hundred dollars (\$100.00); that the income of said fund shall be used to further legal education in the State of Indiana, primarily through the medium of the INDIANA LAW JOURNAL, devoted exclusively to the discussion of legal and judicial questions; that said endowment fund shall be so planned as to ultimately reach the principal sum of one hundred thousand dollars (\$100,000.00); that the officers and Board

of Managers of this association are hereby authorized to organize and set in operation a holding company to hold, manage and invest said funds for the uses and purposes as heretofore stated."

(Signed)—BOARD OF MANAGERS,

By Milo Feightner.

Judge Sharpnack presented his bill for the reorganization of lower courts which bill was printed in its entirety in the October issue of the *LAW JOURNAL*. After speaking in support of his bill, Judge Sharpnack moved that the association endorse it and recommend it to the legislature for passage. The motion was seconded by Professor Gavit. After some discussion by Mr. Campbell, Mr. Ryan, Mr. Fox and Mr. Adams, Mr. Arnold moved to refer the bill to the legislative committee with authority to make such amendments as they see fit, but still carrying the endorsement of the association with it. The motion was seconded, voted upon, and lost. The original question was then put to the association and the motion recommending the bill to the legislature was lost.

Judge Sharpnack then introduced and moved the endorsement by the association of the following bill on the election of judges by a separate non-partisan ballot.

Section 1.

Be it Enacted by the General Assembly of the State of Indiana, That the election of all Supreme, Appellate, Circuit, Superior, Criminal, Probate and Juvenile Judges shall be on a separate non-partisan ballot called the "Judicial Ballot" on which the names of such candidates shall appear without the designation of any party name, party emblem or other partisan designation. Candidates for the judicial offices herein designated shall not be nominated by political parties either by primary or in convention.

Persons desiring to become candidates for the judicial offices indicated shall, at least sixty (60) days before the election, file a written request with the Secretary of State that their names be printed on the ballot as a candidate for the judicial office therein indicated. Before any such name as a candidate for Judge of the Supreme or Appellate Court is printed on the judicial ballot a petition therefor signed by at least five hundred (500) voters of the district from which said candidate is to be elected asking that such names shall be so printed on the judicial

ballot and stating that they desire to vote for such candidate at the election, shall accompany said request.

Before any such name is printed on the ballot as a candidate for Judge of the Circuit, Superior, Probate, Juvenile or Criminal Courts a petition therefor signed by at least five hundred (500) voters of the circuit or district from which said candidate is to be elected asking that such name shall be so printed on the ballot and stating that they desire to vote for such candidate for the election, shall accompany said request.

Section 2. Form of Ballot.

The form of ballot shall in all things conform to the Australian ballot now in use, except that no party designation shall appear thereon.

Section 3. Preparation of Ballots.

The ballots herein provided for shall be prepared by the State Board of Election Commissioners and delivered to the respective county officials as other ballots are delivered.

Section 4. Determination of Election.

The candidate for a judicial office receiving the highest number of votes shall be declared elected.

Section 5. Vacancies, How Filled.

If a candidate for a judicial office is removed because of death, resignation or withdrawal after the expiration of the time for filing declarations and before the ballots for said election are printed the vacancy so caused may be filled by declaration and petition of 200 voters of the district, as applied to the Supreme and Appellate Court Judges, and of the circuit or district, as applied to other Judges, said declaration and petition to be filed with the Secretary of State as in the first instance.

Section 6. Qualifications.

No one shall be eligible to fill the office of Judge of any of the courts herein named unless he shall be a lawyer of seven years practical experience in the practice of law and that during said period of time the profession of law shall have been his major occupation.

Section 7. Partisan Activities.

It shall be unlawful for any candidate for a judicial office as herein designated to, in any way, make a contribution to any political party during the time that he is a candidate and it shall

be unlawful for such candidate to solicit the support of any political party for his candidacy as such candidate.

Violation of the provisions of this section shall render such candidate ineligible to such office.

Section 8. Application of General Election Laws.

All matters pertaining to the election of Judges are not herein specially provided for shall be governed by the General Election Laws now in force.

Section 9. Laws Repealed.

All laws and parts of laws in conflict herewith are hereby repealed.

This bill was discussed by Mr. Miller, Mr. Kane, Mr. Carlisle, Judge Remy, Mr. Barns, Judge Sparks, Mr. Stump and Mr. Corbit. The association voted to endorse the bill.

Reports were made by the Treasurer, Mr. Batchelor; by the chairman of the committee on annotating the restatements of the American Law Institute, Dean McNutt; by the chairman of the committee upon publication of the laws of Indiana Territory, Judge Remy; by the chairman of the membership committee, Mr. Richman; by the chairman of the committee on jurisprudence and law reform, Mr. Dix; by the chairman of the American Citizenship committee, Mr. Garrison; by the chairman of the grievance committee, Mr. Gilliom; by the chairman of the committee on legal education, Professor Gavit; and by the editor of the LAW JOURNAL, Professor Harper.

The meeting adjourned at 4:00 P. M.

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